

(2023) 07 DEL CK 0129

In the Delhi High Court

Case No : Civil Writ Petition No. 12875 Of 2021, Civil Miscellaneous Application No. 40563 Of 2021

Pradeep Singh Rawat

APPELLANT

Vs

Union Of India & Anr.

RESPONDENT

Date of Decision : 18-07-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 13, 13A, 13(3), 13(2), 13(5)

Railways Act, 1989 — Section 141, 146, 145(b), 147, 174(a)

Citation : (2023) 07 DEL CK 0129

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Avani Bansal, Abhinav Garg, Anshul Kumar, Santosh Kumar Kolkunda, Nandini Bansal, Bhanu Pratap, Neeraj, Sahaj, Vedansh

Final Decision : Disposed Of

Judgement

Neena Bansal Krishna, J

1. The petition under Article 226 of the Constitution of India has been filed for quashing of the impugned Order dated 29.10.2021 issued by the respondent No. 2 demoting the petitioner from Inspector to Sub-Inspector and also for direction to respondent No. 2 to give ad hoc promotion to the petitioner till the disposal of the criminal case as per DPC Guidelines dated 10.04.1989 Rule 17.8.1 with further direction to the respondent not to make any recovery of salary or any amount from the petitioner. The petitioner has also sought directions for setting aside Rules 13(3), 13(5), 13A of CCS Rules/Clause/Condition and Rule 11.1 of DPC Guidelines dated 10.04.1989 which put illegal conditions for promotion

2. The vignette of facts are that the petitioner (having UIN no. 13240774) joined Sashastra Seema Bal (hereinafter referred to as "SSB"), the respondent No. 2 herein, on 23.11.2012 and after his training was completed, he joined the 51st

Bn, Sitamarhi-II as Sub-Inspector, General Duty in 2014.

3. The name of petitioner was approved for promotion from Sub-Inspector, General Duty, to Inspector, General Duty vide Office Order No. 147/51st BN/SSB/EII/Promo(SOs)/GD-Cadre/Vol-11/18/11689-706 dated 13.06.2018, by the Departmental Promotion Committee (hereinafter referred to as "DPC") after following due procedure for promotion and clearance from the Department.

4. The petitioner on promotion, was transferred from 51st Bn to 55th Bn vide Order dated 25.06.2018 consequent to which Petitioner took charge as Sub-Inspector (General Duty/GD). Thereafter, on the recommendation of DPC, the Respondent no. 2/Competent Authority approved promotion of the Petitioner to the rank of Inspector (GD), on 17.07.2018.

5. However, after completing 3 years and 5 months in the rank of Inspector, (G D), on the recommendation of Review DPC, the Respondent No. 2 vide Order No. 1/3/R-DPC/SI-Insp/SSB/Pers-II/2018/pt-02/50732-35 dated 29.10.2021 reversed the petitioner to Sub-Inspector, (GD). The ground taken for reversal of the petitioner's promotion was that a Criminal Case bearing No. 554/2016 under Sections 141, 145(b), 146, 147, 174(a) of the Railway Act, 1989 is pending in the court of Judicial Magistrate (First Class) for Railways, Kazipet, Telangana.

6. The petitioner has challenged the reversal of petitioner's promotion as being ex facie illegal and arbitrary for the reason that Rule 13.2 of the CCA/CCS Rules, 1965 provides that at the time of consideration of the cases of Government servants for promotion, details of Government servants "in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending", should be specifically brought to the notice of the DPC. As the Charge Sheet against the petitioner had been filed on 27.06.2017, while the promotion of the petitioner was done subsequently on 25.06.2018, DPC should have checked the record of the petitioner before promoting him to the Rank of Inspector, (GD) at the following stages:

"(i) At the time of checking the records of departmental proceeding pending against the petitioner;

(ii) Twice at the time of vigilance clearance. Vigilance clearance must be given after successful consideration of fact that no prosecution for a criminal charge is pending against the petitioner: -

(a) At the when DPC recommended the petitioner;

(b) At the time when petitioner was actually promoted.

(iii) During the period of one year when the petitioner was in ad hoc period of promotion;

(iv) Every three consecutive years, when the DPC sits to recommend promotion and review;

- (v) At the time when the respondent No. 2 has conducted the enquiry;
- (vi) Every three consecutive years, when the ACR of the petitioner is submitted to the Department."

7. The petitioner has asserted that despite having checked the record of the petitioner at the stages as stated above, both the respondent No. 2 and DPC had not acted and all of a sudden, after a span of 3 years and 5 months, the respondent No. 2 reversed the petitioner's promotion on the specious ground that it did not consider the fact of pendency of a criminal case against the petitioner, which is gross abuse of process and misuse of power exercised in violation of Rule of Law.

8. The petitioner has claimed that despite the knowledge of the criminal case pending against the petitioner, the DPC failed to follow the Sealed Cover Procedure as per the OM dated 10.04.1989 requiring the recommendation of DPC to be kept in sealed cover. Moreover, Rule 13.2.1 of the CCA/CCS Rules, 1965 was not followed by the respondent which caused prejudice to the petitioner.

9. It is stated that since the gravity of charges against the Petitioner in the pending criminal case are not serious viz. Sections 141, 146, 145 (b), 147, 174 (a) of the Railways Act, 1989 and there is nothing otherwise on record to show that his promotion would be prejudicial to the public interest, reversal of his promotion now, would lead to waste of three years during which the sealed cover process was not followed. Since the outcome of the criminal case can take years, reversal of promotion of the Petitioner is violative of right to profession under Art. 19, as also right to dignity under Article 21 of the Constitution. The impugned reversal is also violative of the petitioner's right to equality under Article 14 of the Constitution of India for being treated differently as opposed to other candidates against whom cases maybe pending.

10. It is further claimed that the Reversal Order dated 29.10.2021 is arbitrary and against the Principles of Natural Justice as it was passed without any notice to the petitioner. The Petitioner has not been given the opportunity to be heard before passing the Order to enable the competent authority apply its mind to the explanation that may be furnished before taking the decision. Application of mind must be apparent from the Order as held by the Supreme Court in the case of Tar Lochan Dev Sharma v. State of Punjab [2001] 6 SCC 260. Reliance has also been placed upon the decision of the Apex Court in the case of Umanath Pandey v. State of UP [2009] 12 SCC 40-43 and Biecco Lawrie Ltd v. State of West Bengal [2009] 10 SCC 32 to emphasise the importance of a Show Cause Notice.

11. It is asserted that the petitioner is eligible for ad hoc promotion as per the Paragraph 17.8.1 of the Guidelines issued by the Department of Personnel and Training, Ministry of Personnel, (DoPT) Public Grievances and Pensions vide Office Memorandum dated 10.04.1989, for DPC.

12. Therefore, the petitioner has sought ad hoc promotion since there has been

an unreasonable delay in the criminal case pending against the petitioner and none of the circumstances as mentioned above are against him.

13. The petitioner has also placed reliance on the case of Satish Kumar Kherpal vs Director General CISF and Ors. 2017 SCC OnLine Del 7491 & P.N. Premchandran vs State of Kerala and Ors. (2004) 1 SCC 245 to contend that he should be granted promotion with retrospective effect as serious prejudice has been caused to him for reasons not attributable to him.

14. The respondents in their Counter-Affidavit have explained that the pendency of Criminal Case Cr. No. 554/2016 dated 21.05.2016 registered against the petitioner and the Charge-sheet bearing No. 192/2017 filed on 27.07.2017 which was pending before the Magistrate (First Class) for Railways, Kazipet, Telangana, could not be taken into consideration by the DPC held on 23.05.2018 as there was nothing adverse mentioned in DPC note.

15. It is explained that all the Field Units were asked to submit particulars in respect of their Unit personnel through Frontier Headquarters. The petitioner's Unit also submitted the particulars in respect of him wherein it was certified that no Departmental Enquiry/vigilance case is either pending or contemplated against him.

Since, the petitioner's Unit i.e., 51st Bn SSB gave the clearance to the petitioner, the particulars of the petitioner were produced in the DPC Note for assessing his eligibility for promotion to the Rank of Inspector, General Duty.

16. The DoP&T vide its Memorandum bearing No. 36012/11/2016-Estt (Res.) dated 30.09.2016 issued the directions to FHQ that "in order to preclude interim order in the contempt case, as desired by the Hon'ble Supreme Court, the learned Solicitor General has undertaken that till such time, the main matter along with the contempt petition is decided, no further promotion of reserved category persons to unreserved posts will be made based on the DoPT OM dated 10.08.2010 and Railway Board Circular dated 14.09.2010". Accordingly, as per the directions of the Ministry of Home Affairs, regular promotions were held up. However, the CRPF took up the proposal with the Ministry of Home Affairs for conducting of DPCs for ad hoc promotions for filling up the large number of vacant posts lying in various cadres which was adversely affecting the functional and operational works of the Force.

17. As per the advice of the Ministry of Home Affairs, the Director General, SSB accorded approval for ad hoc promotion in respect of Sub-Inspectors, GD to the Rank of Inspector, GD. Accordingly, the DPC was held on 23.05.2018 at FHQ SSB, New Delhi and pursuant to its recommendation, ad hoc promotion of eligible Sub-Inspectors, GD to the Rank of Inspector, GD was approved on 31.05.2018. The petitioner also got promoted on 25.06.2018 vide 55th Bn. Ending Office Order No. 13438-50 dated 25.06.2018. Thereafter, as per the instructions contained in DoP&T O.M. No. 36012/11/2016/Estt (Pers-I)(Pt-II) dated 15.06.2018, ad hoc DPC was regularized by conducting regular DPC on

28.06.2018.

18. It is further explained that pendency of criminal case against the petitioner, came to the knowledge of the Respondents from the representation made to FHQ SSB, New Delhi for promotion by Constable, GD, Ameresh Sharma of 35th Bn, SSB who was not recommended for promotion to the post of Head Constable (GD) due to pendency of criminal case against him, quoting the promotion given to the petitioner despite he also having a criminal case pending against him.

19. It is contended that as per Paragraph-18.1 of the Establishment & Administration, the proceedings of any DPC may be reviewed if the DPC has not taken all material facts into consideration or if material facts have not been brought to the notice of DPC or if there have been grave errors in the procedure followed by the DPC. Thus, it may be necessary to convene Review DPCs to rectify certain unintentional mistakes, namely, –

“(a) where eligible persons were omitted to be considered; or

(b) where ineligible persons were considered by mistake; or

(c) where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or

(d) where some procedural irregularity was committed by a DPC; or

(e) where adverse remarks in the CRs were toned down or expunged after the DPC had considered the case of the officer.”

20. Thus, on the basis of complaint made by Constable, General Duty, Ameresh Sharma, a review DPC was constituted which after a perusal of all the relevant records relating to promotion of the petitioner and after careful scrutiny of all the aspects of the case and due application of mind, recommended reversion of the petitioner to the Rank of Sub-Inspector, General Duty, on account of the criminal case pending against him. FHQ SSB New Delhi vide its Order dated 29.10.2021, approved the reversion of the petitioner to the Rank of Sub-Inspector and the petitioner was reversed to the rank of Sub-Inspector, (GD) vide Order dated 17.11.2021.

21. It is asserted that the Review Committee of DPC has kept the promotion recommendation in a sealed cover on account of pendency of the criminal case against the petitioner. In terms of Paragraph-3 of DoP&T O.M. dated 14.09.1992 if conclusion of the disciplinary case/criminal prosecution results in dropping of allegations against the Government servant, the sealed cover shall be opened and the promotion of the petitioner to the Rank of Inspector, (GD) shall be considered by the next DPC in normal course of time subject to outcome of the criminal case pending against the petitioner.

22. Lastly, it is submitted that reversion of the petitioner has been made in accordance with the instructions contained under the Rules, and the same is not violative of the Article 14 of the Constitution of India. Accordingly, the present

petition is without merit and the same may be dismissed.

23. Submissions heard and the Written Submissions of both the parties perused.

24. At the outset it is pertinent to examine the power of the court for Judicial Review under Article 226. It is not an appeal from the impugned decision, but a review of the procedure and the manner in which the decision has been rendered. The jurisdiction of the High Court under Article 226 of the Constitution of India is extraordinary, original, plenary, equitable and discretionary, but not appellate or revisional. The jurisdiction of the High Court is, therefore, supervisory and, obviously, not appellate.

25. Consequently, Article 226 is not designed for the High Court to convert itself into the Court of Appeal and examine for itself the correctness of the impugned decision and decide what is the proper view to be taken or ordered. The main premise of Article 226 and underlying purport of Judicial Review is to ensure that the individual receives fair treatment, and to ensure that the Authority reaches on a matter which it is authorized or enjoined by law to decide, after according fair treatment, a conclusion which is correct in the eyes of Court.

26. As observed in the case of B.M. Rao Vs. State of Gujarat 2005 (4) SLR 89, in a petition under Article 226, the High Court discharges a much wider function i.e. to mould relief in accordance with the facts of the case with a view to do complete justice between the contending parties, and competing and rival interests. In a domestic inquiry, the principles of natural justice must be observed. The amplitude of the realm of natural justice is very wide and when the Court finds, in exercise of its Judicial Review under Article 226, that the impugned action or the order is tainted with colourable exercise of power, mala fide, arbitrary, unreasonable, discriminatory or the case of victimization, then the Court has to quash and annul such action or order of the administrative authority or the executive functionary.

27. It is in this light, the facts of the present case are to be considered by this court, as to whether Reversal Order dated 29.09.2021 is arbitrary, illegal and liable to be quashed.

28. Admittedly, the petitioner has a criminal case bearing Cr. Case No. 554/2016 pending against him before Judicial Magistrate, First Class for Railways, Kazipet, Telangana Court before whom the Chargesheet was filed on 27.06.2017.

29. Rule 13.2 of the CCS Rules, 1965 prescribe the procedure to be followed when government servants against whom disciplinary/court proceedings are pending or whose Conduct is under investigation, are promoted. It reads as follows-

"13.2 At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-I) Government servants

under suspension;

ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and

iii) Government servants in respect of whom prosecution for a criminal charge is pending.

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of in respect of Shri (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri ' The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government 'Servant for his promotion are kept in a sealed cover.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position..."

30. The Sealed Cover Process permits the question of promotion to be kept in abeyance till the result of any pending disciplinary inquiry/criminal prosecution against the employee as has been observed by the Supreme Court in the case of Union of India Etc. v. K.V. Jankiraman, 1991 SCR (3) 790.

31. The rationale behind adoption of the sealed cover procedure during the pendency of charges/disciplinary proceedings against a government servant is elaborated by the Apex Court in the case of Delhi Developmental Authority vs H.C. Khurana 1993 SCR (2)1033, wherein the Supreme Court has observed that in such a situation the promotion of the employee, even if he is found otherwise suitable, would be incongruous, because a government servant under such a cloud should not be promoted till he is cleared of the allegations against him.

However, even though it would be improper to promote him, if found otherwise suitable, it would not be fair to exclude him from consideration for promotion till conclusion of the disciplinary proceedings which determine the correctness of the allegation. To reconcile these conflicting interests of the government servant and public administration, the Sealed Cover procedure is adopted whereby, the result of the employee's case for promotion and determination with regards to suitability for promotion otherwise, is kept in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings. In case he is exonerated, he can be promoted with all consequential benefits; if found otherwise suitable by the Selection Committee. This guideline to follow the sealed cover procedure in such cases helps to prevent the possibility of any injustice or arbitrariness.

32. As per Rule 17.2 of the Guidelines, a clearance regarding pending disciplinary proceedings is required to be taken by the Vigilance Office before the promotion of the government servant is confirmed after approval by the DPC. A perusal of the documents show that before promoting the Petitioner, in reply to the Fax dated 26.10.2017 regarding service particulars in respect of SIs (GD) for DPC to the rank of Inspector (GD) for vacancy year 2018-19, the service particulars of the Petitioner were sent to the Force Hqrs, SSB, New Delhi on 10.11.2017. Evidently, the Unit of the petitioner certified that no DE/Vigilance case is either pending or contemplated against the Petitioner. Since the Unit had given clearance of the Petitioner from DE/Vigilance angle, the particulars in respect of all eligible personnel who fall within the consideration zone were produced before the DPC for assessing their eligibility for further promotion to the rank of Inspector (GD).

33. Accordingly, as per Order dated 25.06.2018, the SIs/GDs were approved for promotion to the rank of Insp (GD) on an ad-hoc basis for a period of one year from the date of assumption of charge or till the post was filled up on regular basis or until further order whichever is earlier. The ad-hoc promotion of the petitioner was subsequently changed to a regular promotion to the rank of Inspector (General Duty) vide Regular DPC conducted on 28.06.2018. Admittedly, because there was no note disclosing the criminal charges pending against him, the respondent No.2 had no occasion to follow the "sealed cover procedure" against the petitioner.

34. The Petitioner who was otherwise found eligible, could not have been granted promotion while there were criminal charges pending against him. The respondents in the circumstances, should have followed the "sealed cover procedure" as provided in Rule 13.2 of the CCS Rules, 1965, which could not be followed for want of complete details before it. The fault was of the respondents in not furnishing complete particulars to DPC.

35. The procedure for granting ad-hoc promotion to Government servants against whom criminal charges are pending before courts, is stated in OM dated 14.09.1992.

"17.8.1. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/ criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:-

- a) Whether the promotion of the officer will be against public interest;
- b) Whether the charges are grave enough to warrant continued denial of promotion;
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- d) Whether the delay in the finalisation of proceedings departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution. The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

17.8.2 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

17.8.3 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that:-

- i) the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
- ii) the promotion shall be until further orders. It should also be indicated in the orders that the Government reserve the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

17.8.4 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-hoc promotion with all attendant benefits..."

36. Rule 17.8.1 of the DPC Guidelines and the Rule 5 of the Office Memorandum dated 14.09.1992 provides that if the Chargesheet has been filed against the Government servant, and is pending then the Appointing Authority may consider the suitability of the concerned employee for the promotion and the result thereof may be kept in the sealed cover. Further, if even after two years, the charge sheet is pending, then the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion. In case, the Appointing Authority comes to a conclusion to allow ad hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide the suitability for promotion on ad hoc basis. Even when considering the ad hoc promotion, the Department has been given enough leeway to consider the desirability of ad hoc promotion to take account of entire surrounding circumstances. In such cases, the Government servant may be considered for the grant of ad hoc promotion by the Authority taking into account factors enumerated in Rule 17.8.1, namely, the gravity of charges, public interest and that there would be no misuse of office by the petitioner after promotion. The relevant circumstances mandating the "ad hoc promotion" is that there is inordinate delay in finalization of criminal case for reasons not attributable to the petitioner.

37. This procedure has been recommended with the sole intent of ensuring that no irreversible prejudice is caused to the petitioner in his career progression. At the same time, this procedure also ensures that the interest of the Department is not prejudiced in any manner.

38. In the case of P.N. Premchandran vs State of Kerala and Ors. (2004) 1 SCC 245 the Apex Court observed that it was in view of the administrative lapse that the DPC was not convened from 1964 to 1984 and the employees could not have been made to suffer for such a lapse. As the employees were entitled for promotion in the ordinary course, and there was no irregularity in the grant of promotions, the promotion with a retrospective effect could not be questioned.

39. In the case of Satish Kumar Kherpal vs Director General CISF and Ors. 2017 SCC OnLine Del 7491 the petitioner was due for promotion in the year 2011 but was overlooked and he was actually promoted on 03.01.2014 with retrospective effect from 12.03.2012, being the date on which Inspectors junior to him were promoted to the same post. This caused great difference to his retiral benefits. In the said case, this court observed that it was the authorities who had prevented the petitioner from attending said course due he could not be released for the course due to administrative exigencies and the delay was not attributable to

him. Hence, he was granted the benefit of notional promotion from 30.01.2012.

40. In the present case, the Chargesheet was filed against the petitioner on 27.06.2017, and more than two years have elapsed since then. As the petitioner has a criminal case pending against him for which Chargesheet had already been filed, the "Sealed Cover Procedure" for the promotion of the petitioner as described above, should have been adopted at the time when he was first promoted in 2018. The "Sealed Cover Procedure" could not be followed as the Department while sending the DPC note reporting about the antecedents of the petitioner to DPC, inadvertently did not report the criminal case against him since 2017. The DPC not being aware of the pending charge-sheet, found the petitioner eligible and recommended promotion on 13.06.2018 which was confirmed by competent authority on 17.07.2018. The petitioner was thus found suitable but for the pending criminal case.

41. Rule 18.1 in Guidelines on Departmental Promotion Committee notified vide OM No.22011/5/86- Estt.(D) dated 10.04.1989 provides the procedure in case of any inadvertent mistake committed by DPC while considering promotions. It provides that the procedure to be followed in such cases is to constitute Review DPC. It reads as under: -

"18.1 The proceedings of any DPC may be reviewed only if the DPC has not taken all material facts into consideration or if material facts have not been brought to the notice of the DPC or if there have been grave errors in the procedure followed by the DPC. Thus, it may be necessary to convene Review DPCs to rectify certain unintentional mistakes, e.g.

(a) where eligible persons were omitted to be considered;

or

(b) where ineligible persons were considered by mistake;

or

(c) where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or

(d) where some procedural irregularity was committed by a DPC; or

(e) where adverse remarks in the CRs were toned down or expunged after the DPC had considered the case of the officer."

42. The minutes of Review Committee meeting held on 29.09.2021 states that the Review DPC was constituted based on a complaint made by CT (GD) Amresh Sharma of 35th Bn (who was also involved in the same case), for not promoting him to the rank of HC(GD) quoting reference of promotion of SI(GD) Pradeep Singh Rawat, to the rank of Insp/GD.

Consequently, promotion case of petitioner, SI/GD (now Insp/GD) Pradeep Singh Rawat, 51st Bn (Now 55th Bn) was examined and it was found that the DPC

recommendations should have been kept in sealed cover as per Rule 13 of the CCS Rules, 1965, as a criminal case was pending against the petitioner before Judicial Magistrate, First Class for Railways, Kazipet, Telangana Court. Hence, there was sufficient reason for the Review Committee to be constituted as the petitioner's promotion was done inadvertently despite him not being eligible because of pending criminal case against him. We find that the Review DPC was thus, rightly constituted in accordance with the Rules. The respondent No.2 has rightfully cured the procedural irregularity and rectified its mistake by constituting a Review DPC.

43. The scope of Review DPC has been explained by the co-ordinate Bench of this court in the case of Sh. K.M. Agrahari vs Govt. Of N.C.T. Of Delhi And Ors. MANU/DE/0765/2002 wherein it was observed that where there is sufficient material to show that a promotion de hors the Rules, is not legal and a promotion is not in accordance with law and not be sustained, even so it is for the review DPC to consider the whole aspect of the question and record its own conclusion. The review DPC should not go into only the negative aspect as to whether the existing promotion is legal or illegal. It should also examine the antecedents at each and every stage when the officer is due for promotion, from the date he was eligible till the date of the review DPC. To enable the Review DPC to arrive at an informed decision, it is imperative that it should be apprised of the facts and circumstances of the entire case by a self contained note which has to be duly approved by the concerned Department.

44. The Review DPC thus constituted though after more than three years, noted the pending criminal case and reversed the promotion of the petitioner by order dated 29.10.2021 i.e. approximately 3 years 5 months, with the recommendation that his case for promotion to the rank of Inspector (GD) would be considered by next DPC in normal course after outcome of aforesaid court case.

45. The grievance of the petitioner is about the reversal of his promotion. The petitioner has contended that during this period i.e., since 2018, he was entitled for Sealed Cover Procedure as per Rule 5 of OM dated 14.09.1992. Further, as provided under Rule 17.8.1 of the DPC Guidelines dated 10.04.1989; he should be granted ad-hoc promotion. The petitioner has placed reliance on the case of Union of India vs K.V. Jankiraman 1991 SCR (3) 790.

46. In view of the above discussion and settled position of law, we find substance in the assertions of the petitioner. The petitioner herein was given regular promotion as nothing adverse was found in his conduct. However, it is on account of inadvertence of the Department which failed to report pending criminal case against the petitioner, that this fact was not incorporated in the DPC Note resulting in the promotion of the petitioner to the post of Inspector in 2018. His reversal came after 3 years and 5 months; the only reason being the pending criminal case about which they came to know from the complaint dated 20.09.2020 of Amresh Sharma. Had the Sealed Cover Procedure been followed in

2018 when the promotions were made, the petitioner after the lapse of two years would have become entitled to ad hoc promotion by the Appointing Authority. The petitioner has suffered immense loss of reputation and dignity on account of reversal of his promotion. There is nothing on record to show that his promotion would be prejudicial to the public interest in any manner, more so when in the three and half years when he was working on promotional post, nothing adverse was ever reported. The petitioner is entitled to be considered for ad hoc promotion by DPC in accordance with the Rules.

47. This Court however, cannot assume the Administrative/Executive function of determining the suitability of the petitioner for ad hoc promotion as observed in *Ramanand Prasad Singh vs. Union of India* (1996) 4 SCC 64. The Apex Court emphasized in the context of grading, that discretion lies essentially with the DPCs/Selection Committees and the court should not generally interfere. The Selection Committee may not necessarily be adopting the same grading as is given by the Reporting Officer/Reviewing Officer in respect of each candidate, but may sit on independent assessment on the basis of overall confidential dossiers of the officers in the zone of consideration. It thus does not evaluate the confidential report dossier of an individual in isolation.

48. Similar observations were made by the Apex Court in *M.V. Thimmaiah vs. UPSC* (2008) 2 SCC 119 and *Union of India v. S.K. Goel* (2007) 14 SCC 641.

49. We, therefore, allow the present petition and direct that the respondents shall constitute Review DPC within 30 days from the date of this Order to consider the grant of ad hoc promotion to the petitioner along with all consequential benefits thereof from the date he had taken charge as Inspector, General Duty vide Office Order dated 25.06.2018 in accordance with Rule 17.8.1 of the DPC Guidelines dated 10.04.2018 along with Rule 5 of the Office Memorandum dated 14.09.1992 and the entire procedure be completed within one month thereafter.

50. Accordingly, the present petition along with pending application (s), if any, is disposed of.